

Order

Michigan Supreme Court
Lansing, Michigan

January 23, 2009

Marilyn Kelly,
Chief Justice

137554

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 137554
COA: 278828
Wayne CC: 07-004817-01

ANTONIL DIONTE WHITAKER,
Defendant-Appellant.

_____ /

On order of the Court, the application for leave to appeal the September 11, 2008 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals and REMAND this case to the Wayne Circuit Court for a hearing at which Stephanie McClung may be examined and cross-examined to determine whether her testimony supports the defendant's alibi defense. The Wayne Circuit Court shall order a new trial unless it finds that Stephanie McClung's absence from the first trial was harmless beyond a reasonable doubt. *People v Anderson*, 446 Mich 392, 405-406 (1994). The prosecuting attorney shall provide to the defendant, or defense counsel, upon request, reasonable assistance, including investigative assistance, as may be necessary to locate, serve process upon, and compel the attendance of Stephanie McClung at the hearing. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 23, 2009

Corbin R. Davis

Clerk